UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,021	01/16/2001	Steven Lurie	76705-201201/US	8048

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EXAMINER
GAUTHIER, GERALD

ART UNIT	PAPER NUMBER
2614	

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/764,021	LURIE, STEVEN
	Examiner	Art Unit	
	Gerald Gauthier	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _27 July 2006_.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _See Continuation Sheet_ is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _1,3-8,13,17-26,32-34,37,40,41,43-46,49,50,53,54,57-66,69,70,72,73,77,80,81,83-86,89,90,93,94,97 and 99-103_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
    1.☐ Certified copies of the priority documents have been received.
    2.☐ Certified copies of the priority documents have been received in Application No. _____.
    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _6/19/06_.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 1,3-8,13,17-26,32-34,37,40,41,43-46,49,50,53,54,57-66,69,70,72,73,77,80,81,83-86,89,90,93,94,97 and 99-103.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

    1.   Determining the scope and contents of the prior art.
    2.   Ascertaining the differences between the prior art and the claims at issue.
    3.   Resolving the level of ordinary skill in the pertinent art.
    4.   Considering objective evidence present in the application indicating
            obviousness or nonobviousness.

3.   **Claim(s) 1, 3-8, 13, 17-26, 32-34, 37, 40-41, 43-46, 49-50, 53-54, 57-66, 69-70,**

72-73, 77, 80-81, 83-86, 89-90, 93-94, 97 and 99-103 are rejected under 35 U.S.C.

103(a) as being unpatentable over Montenegro et al. (US 5,694,537) in view of

Seazholtz et al. (US 6,246,875 B1).

        Regarding **claim(s) 1, 37, 57 and 77**, Montenegro discloses a system (FIG. 1

and column 1, lines 7-10), comprising:

        a second logic unit to receive from a user a selection of a service provider from

the list of service providers (column 8, lines 10-17);

        a third logic unit to attempt to establish a real-time communications connection to

the selected service provider in response to the selection (column 10, lines 50-54); and

a fourth logic unit to search a database for an alternate service provider in

response to a failed attempt to connect the selected service provider and the user, and

to offer the user an option of connecting with the alternate service provider (column 9,

lines 57-62).

Montenegro fails to disclose a first logic unit to provide a list of service providers

indicating a real-time availability and a rate of each at least one service provider.

However, Seazholtz teaches a first logic unit to provide a list of service providers

via a communication connection, indicating a real-time availability and a rate of each at

least one service provider of the service providers (column 17, lines 16-35 and column

15, lines 4-23).

Therefore, it would have been obvious to one of the ordinary skill in the art at the

time the invention was made to modify the invention of Montenegro using the teaching

of selecting a service provider as taught by Seazholtz.

This modification of the invention enables the system to provide a list of service

providers indicating a real-time availability and a rate of each at least one service

provider so that the user would have a wireless communication while roaming.

Regarding **claim(s) 3, 18, 34 and 83**, Montenegro discloses a system, wherein,

in response to a connection established between the selected service provider and the

user, the fourth logic unit presents the alternate service provider after communication is

completed with the selected service provider (column 8, lines 18-31).

Regarding **claim(s) 4, 24, 44, 58 and 84**, Montenegro discloses a system,

wherein the selected service provider is an information provider (column 8, lines 18-31).

Regarding **claim(s) 5, 25, 45, 59 and 85**, Montenegro discloses a system,

wherein information of the information provider is provided as a recorded transmission

(column 8, lines 18-31).

Regarding **claim(s) 6, 26, 46, 60 and 86**, Montenegro discloses a system,

wherein information of the information provider is provided as a communication with a

live person (column 8, lines 46-50).

Regarding **claim(s) 7, 19, 40 and 80**, Montenegro discloses a system, wherein

the selection is received over a telephone connection (column 8, lines 18-31).

Regarding **claim(s) 8, 20, 41 and 81**, Montenegro discloses a system, wherein

the selection is received over the communication connection, which includes an Internet

connection (column 8, lines 18-31).

Regarding **claim(s) 13, 32, 33 and 61**, Montenegro discloses a system, wherein

a set of criteria to search the database for the alternative service provider is established

by a system administrator of the system (column 7, lines 38-48).

Regarding **claim(s) 17 and 97**, Montenegro in combination with Seazholtz

disclose all the limitations of **claim(s) 17 and 97** as stated in **claim(s) 1**'s rejection and

furthermore Montenegro discloses a communications interface (45 on FIG. 3); and

a controller computer linked with the communications interface (49 on FIG. 3).

Regarding **claim(s) 21**, Montenegro discloses a system, wherein the first logic

unit provides the list of providers to the user via a web page (column 8, lines 18-31).

Regarding **claim(s) 22**, Montenegro discloses a system, wherein the second

logic unit receives the user's selection via a web page (column 8, lines 18-31).

Regarding **claim(s) 23**, Montenegro discloses a system, wherein the third logic

unit provides a list of the alternate service providers to the user via a web page (column

8, lines 18-31).

Regarding **claim(s) 41**, Montenegro discloses a method, in response to a

connection established between the selected service provider and the user, providing

the option to connect to the alternate service provider after the communications ends

between the user and the selected service provider ends (column 8, lines 18-31).

Regarding **claim(s) 49, 69 and 89**, Montenegro discloses a method, wherein the

user can determine the range (column 8, lines 18-31).

Regarding **claim(s) 50, 70 and 90**, Montenegro discloses a method, wherein a

system administrator can determine the range (column 8, lines 18-31).

Regarding **claim(s) 53, 72 and 93**, Montenegro discloses a method, wherein a

system administrator can establish the criteria by which a match is determined (column

8, lines 18-31).

Regarding **claim(s) 54, 73 and 94**, Montenegro discloses a method, wherein the

user can establish the criteria by which a match is determined (column 8, lines 18-31).

Regarding **claim(s) 62**, Montenegro discloses a method, wherein the selected

service provider receives a pre-established percentage of any commission paid to the

alternate service provider (column 8, lines 46-50).

Regarding **claim(s) 63**, Montenegro discloses a method, wherein the selected

service provider is given an option to provide access to the database when the selected

service provider creates an initial listing (column 8, lines 46-50).

Regarding **claim(s) 64**, Montenegro discloses a method, wherein the option

defaults to allow access to the database (column 8, lines 46-50).

Regarding **claim(s) 65**, Montenegro discloses a method, wherein the selected service provider is notified of a missed connection with the user (column 8, lines 46-50).

Regarding **claim(s) 66**, Montenegro discloses a method, wherein the notice comes in a form of an e-mail (column 8, lines 32-46).

Regarding **claim(s) 99**, Montenegro discloses a system, wherein the user can specify a method by which the selected service provider is reconnected with the user (column 8, lines 46-50).

Regarding **claim(s) 100**, Montenegro discloses a system, wherein the user can set a time limit on when to reconnect to the selected service provider (column 8, lines 46-50).

Regarding **claim(s) 101**, Montenegro discloses a system, wherein the system is remote to the user (column 8, lines 46-50).

Regarding **claim(s) 102**, Montenegro discloses a system, wherein the database is searched for the alternative service provider based at least on reliability factor indicating a ratio of successful attempts to connect the alternate service provider and previous users to total attempts to connect the alternate service provider and previous users (column 8, lines 46-50).

Regarding **claim(s) 103**, Montenegro discloses a system, wherein the database

is searched for the alternative service provider based at least on one or more of: rate

within a predetermined range of a rate of the selected service provider, and subject

matter (column 8, lines 46-50).

Response to Arguments

4.   Applicant's arguments with respect to **claim(s) 1, 3-8, 13, 17-26, 32-34, 37, 40-**

41, 43-46, 49-50, 53-54, 57-66, 69-70, 72-73, 77, 80-81, 83-86, 89-90, 93-94, 97 and

99-103 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Gerald Gauthier whose telephone number is (571) 272-

7539. The examiner can normally be reached on 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GERALD GAUTHiER
PATENT EXAMINER
GG

Gerald Gauthier
Examiner
Art Unit 2614

September 29, 2006

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